



The Government takes no position on whether permanent injunctive relief or declaratory relief is appropriate in this case. The injunctions in *Pennsylvania v. Trump*, No. 2:17-cv-04540-WB, 2017 WL 6398465 (E.D. Pa. Dec. 15, 2017), and *California v. Department of Health and Human Services*, No. 4:17-cv-05783-HSG, ECF No. 105 (N.D. Cal. Dec. 21, 2017), do not purport to interfere with this case or other existing litigation challenging the prior rules. *See Pennsylvania*, 2017 WL 6398465, at \*21 (“A preliminary injunction will maintain the status quo: those with exemptions or accommodations prior to October 6, 2017 will maintain their status, those with injunctions preventing enforcement of the Contraceptive Mandate will maintain their injunctions, but those with coverage will maintain their coverage as well.”); Order Granting Plaintiffs’ Motion for A Preliminary Injunction at 29, *California*, No. 17-05783, ECF No. 105 (“This nationwide injunction does not conflict with the plaintiff-specific injunctions issued by the courts in the *Zubik* cases or any other case.”).

The Government notes, however, that any injunction entered by the Court should not extend to the Christian Employers Alliance’s “future” members. Proposed Order at 2, ECF No. 32-1. Instead, any injunction should be narrowly tailored to enjoin enforcement against members that joined the Christian Employers Alliance as of the date any injunction is entered and that had not had an adverse ruling on the merits issued against them in another case involving the Mandate.

In addition, any injunction should not refer to “abortifacient drugs” or “abortifacients.” *Id.* at 1-3. Although Plaintiffs may view certain contraceptive methods as abortifacients, that characterization is a matter of intense dispute by many parties, and that characterization is reflected nowhere in the contraceptive coverage requirement, which involves coverage for “[a]ll Food and Drug Administration approved contraceptive methods, sterilization procedures, and

patient education counseling for all women with reproductive capacity.” Health Resources and Services Administration, Women’s Preventive Services Guidelines, <http://www.hrsa.gov/womens-guidelines>. For purposes of clarity, therefore, any injunction should refer to contraceptive coverage services to which Plaintiffs have religious objections (including those Plaintiffs view as abortifacients).

Finally, any relief should not include the declaration proposed by Plaintiffs that “Alliance members comply with their obligations under the Affordable Care Act and Defendants’ regulations under 42 U.S.C. § 300gg-13 by offering otherwise compliant health plans that exclude abortifacient services and related patient education and counseling.” Proposed Order at 2. Plaintiffs provide no basis for this declaration. Indeed, such a declaration would be inconsistent with the other relief Plaintiffs seek, *i.e.*, an injunction prohibiting defendants from “enforcing 42 U.S.C. § 300gg-13(a)(4) and regulations passed in relation to this statute.” *Id.* If the Court enjoins defendants from enforcing the statutory provision and related regulations, there is no need to also declare Plaintiffs to be in compliance with the provision. Furthermore, no other “obligations under the Affordable Care Act,” *id.*, have been at issue in this litigation, apart from the contraceptive Mandate, so there would be no basis for a declaration with respect to any legal requirements that have not been litigated here.<sup>2</sup>

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<sup>2</sup> Plaintiffs’ motion also requests that the Court “find[] that Plaintiffs are entitled to costs [and] reasonable attorney’s fees.” ECF No. 31, at 24. But no motion for attorney’s fees has been filed in this case, and this Court accordingly should reserve judgment with regard to whether any element of a claim for attorney’s fees has been met.

Respectfully submitted this 26th day of March, 2018,

ETHAN P. DAVIS  
Deputy Assistant Attorney General

JOEL McELVAIN  
Assistant Director, Federal Programs  
Branch

/s/ Michelle R. Bennett  
MICHELLE R. BENNETT  
Senior Trial Counsel  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Ave. NW  
Washington, DC 20530  
Tel: (202) 305-8902  
Fax: (202) 616-8470  
Email: michelle.bennett@usdoj.gov

*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 26, 2018, I electronically filed a copy of the foregoing. Notice of this filing will be sent via email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Michelle R. Bennett  
MICHELLE R. BENNETT